

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

\_\_\_\_\_  
UNITED STATES OF AMERICA,  
  
Plaintiff,  
-vs-  
RAYMOND DUGAN,  
  
Defendant.  
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: Criminal Action Number:  
: 2:21-cr-127  
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RESTITUTION HEARING  
BEFORE THE HONORABLE JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE  
JULY 17, 2023

**APPEARANCES:**

**For the Government:**

**JULIE M. WHITE, AUSA**  
**UNITED STATES ATTORNEY'S OFFICE**  
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**For the Defendant:**

**DAVID O. SCHLES**  
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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

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AMANDA J. PICKENS, CCR, RPR  
Federal Official Court Reporter  
300 Virginia Street, East  
Charleston, WV 25301

1 (The following proceedings were held before the  
2 Honorable Joseph R. Goodwin, United States District Judge,  
3 in the case of *United States of America v. Raymond Dugan*, on  
4 July 17, 2023, at Charleston, West Virginia, beginning at  
5 1:27 p.m.)

6 MADAM CLERK: The matter before the Court is the  
7 United States of America versus Raymond Dugan.

8 Criminal Action Number 2:21-CR-127.

9 THE COURT: United States ready?

10 MS. WHITE: Yes, Your Honor.

11 THE COURT: Defendant ready?

12 MR. SCHLES: Yes, Your Honor.

13 THE COURT: On August 2nd, 2022, Mr. Dugan was  
14 convicted of accessing with the intent to view child  
15 pornography as charged in the single-count superseding  
16 indictment. On October 27th, 2022, I sentenced him to a  
17 54-month term of imprisonment followed by five years  
18 supervised release. I ordered \$100 mandatory special  
19 assessment and a \$5,000 special assessment under the Justice  
20 for Victims of Trafficking Act.

21 I refrained from imposing restitution at that time in  
22 order to give defense counsel enough time to examine the  
23 United States' documents supporting restitution in the  
24 amount of \$17,000. I directed Mr. Dugan to deposit \$17,000  
25 with the clerk to hold in a trust until I resolved the issue

1 of restitution. Mr. Dugan did that on December 30th, 2022.

2 On December 22nd, the United States had submitted its  
3 first restitution memorandum and that it was still seeking  
4 17,000 to be paid to three identifiable victims; 3,000 for  
5 Victim Number 1, 4,000 for Victim Number 2 and 10,000 for  
6 Victim Number 3.

7 In his response, Mr. Dugan agreed that the three  
8 individuals are victims of his offense, but argues that the  
9 amounts sought do not reflect the degree to which he  
10 contributed to the victims' losses. He contends that each  
11 victim is entitled to \$3,000, the minimum amount required by  
12 statute. And if that applied there, all three would be  
13 \$9,000.

14 On July 11th, 2023, less than a week before this  
15 hearing, the United States filed a second restitution  
16 memorandum and explained that now there are five victims,  
17 two additional ones, who have requested restitution. April  
18 seeks no less than \$5,000 and Moca seeks \$4,000. The  
19 Government now states that Jenny seeks no less than \$3,000,  
20 when in its previous memorandum the United States stated  
21 that Jenny sought an exact amount of \$3,000. In total, the  
22 United States now seeks restitution in an amount of at least  
23 26,000.

24 Is that a fair summary?

25 MS. WHITE: Yes, Your Honor.

1 MR. SCHLES: It is, Your Honor.

2 THE COURT: Mr. Schles, do you have a response to  
3 the United States' recently filed restitution memorandum?

4 MR. SCHLES: Your Honor, my first response is  
5 simply that the two that were added for the first time on  
6 the July 11th memorandum did not submit anything timely. I  
7 received notice of it through an e-mail shortly before the  
8 memo was filed. It was e-mail correspondence between me and  
9 Ms. White. I was prior to the hearing provided with that.  
10 But I think those two are untimely and should be stricken  
11 from consideration.

12 The Government first filed in October with the three  
13 initial victims, filed again in December, and as the Court  
14 pointed out, less than a week, two -- these come back, were  
15 not presented to probation. Probation prepared a  
16 presentence report I believe in September, Your Honor, but  
17 don't hold me to that.

18 But in any event, well prior to the initial sentencing,  
19 the Government did not object at that time to the  
20 restitution sections of the presentence report. Sentencing  
21 memorandums were filed by both parties ahead of the initial  
22 sentencing. The Government mentioned nothing of those two  
23 victims. The Government following that in December of last  
24 year filed again. And, again, they didn't mention those  
25 two.

1           So my position as to the two, Moca and --

2           THE COURT: April.

3           MR. SCHLES: -- April, I think those should not be  
4 considered, Your Honor, as they were not timely filed or  
5 provided to either the defense or probation in a timely and  
6 proper manner.

7           And as for the three initial -- my position is pretty  
8 simple. The Government under *United States versus Paroline*  
9 has the burden of proof. Now, I concede that they have  
10 established the three girls -- women perhaps now -- are  
11 victims and they are entitled to restitution. But I don't  
12 think the Government has carried any burden in that they are  
13 entitled from my client specifically more than the minimum  
14 amount of \$3,000 each.

15           I have looked through all of this stuff, as  
16 mind-numbing as it is, and I can discern no consistent  
17 methodology, no explanation whatsoever. You notice the one  
18 with the most images that my client possessed has the  
19 smallest request. The one with one has the largest request.  
20 There's no discussion of any comparison of my client to  
21 other defendants, how many times these images have been  
22 viewed online compared to the number of times my client.  
23 It's undisputed my client wasn't involved in preparing them  
24 or distributing them.

25           I believe these women -- victims are entitled to

1 restitution. And I think \$3,000 for each of the three is  
2 the appropriate ruling in this case.

3 THE COURT: Well, there is a lack of reasoned  
4 consistency in the application of the law to these cases  
5 nationwide as best I can tell. For that reason, I have  
6 consulted with Judge Copenhaver and he's willing to take  
7 over this case. And he's going to require a binder from  
8 each of you for about -- I don't know -- three inches thick  
9 -- I'm kidding -- as to that entire statement. I'm not  
10 kidding about the lack of consistency of the application of  
11 the law. And I understand your position.

12 Let me address to the Government. Why am I getting  
13 these two claims late? And I didn't even get, again, the  
14 supporting documentation which from which I can make a  
15 connection for these last two.

16 MS. WHITE: Well, Your Honor, we provided the last  
17 two victims, April and Moca, their information to probation  
18 and to Mr. Schles on June 20th. That was shortly after we  
19 received that information. So to the extent that didn't all  
20 make its way to the Court, I am glad to remedy that and I  
21 apologize that that wasn't received by the Court. I wasn't  
22 aware that we didn't all have the same materials that we  
23 were working with.

24 We don't generate restitution requests. The United  
25 States is not responsible for that. We received the

1 restitution requests from the victims' representatives.  
2 Moca is represented by Jones Day and April is represented by  
3 Restore the Child, PLLC, two law firms that do a lot of work  
4 in this area of law. I explained to them -- certainly,  
5 Jones Day I recall saying, "You're -- you're way after when  
6 we got all the other restitution submissions." And I asked  
7 him to address that in his letter to the Court explaining  
8 why he was late.

9 THE COURT: Well, I didn't get it, so --

10 MS. WHITE: And so I apologize, Your Honor. I  
11 thought that you had received that. He certainly did write  
12 a cover letter explaining the delay in notification. But we  
13 did provide it to defense counsel on June 20th. I'm in the  
14 position of being the messenger in this one. We receive it  
15 from the victims and we pass it forward.

16 I would tell the Court that mind-numbing is a stunning  
17 way to describe these victims and their submissions to the  
18 Court about the pain and suffering that they have endured.  
19 Obviously, their first substantial pain and suffering came  
20 from their sexual abuse itself at the hands of their initial  
21 offenders. And those individuals were presumably punished  
22 in a different court of law. But each of those submissions  
23 through their psychological evaluations, their victim impact  
24 statements, their doctor reports, they all tell the Court in  
25 different ways this: The defendant is part of the trade

1 that continues their embarrassment, abuse and humiliation.  
2 If people like Raymond Dugan would stop looking at and  
3 collecting Moca's images, she wouldn't have to deal with  
4 this. She could get some closure. And that goes for all  
5 five victims. It never ends because those children never  
6 truly heal because each defendant, including Mr. Dugan, who  
7 chooses to take those images and look at them and use them  
8 for their sexual pleasure, exploits that child once again.  
9 And that is why we are here. So I would take umbrage with  
10 the use of the term mind-numbing.

11 THE COURT: Now, I hope you won't take too much  
12 umbrage to the fact that I find that the courts have been  
13 less than clear in the way they explain they calculate this  
14 or the principles to which they apply individual cases. And  
15 for this Court to find a common thread or bright lines for  
16 making these determinations is frustrating.

17 MS. WHITE: It's very challenging, Your Honor. I  
18 agree with what you're saying. I recognize that there's no  
19 formula. There's no real direction, no real guidance.

20 But what I'll say Ms. Schles is recommending is that  
21 all of the victims get together and decide the defendant's  
22 relative culpability in this particular case. That's not  
23 reasonable or feasible. And because the child in the  
24 Aprilblonde series -- or no -- I'm sorry. Because Jenny is  
25 only asking for no less than 3,000 and he had a 113 images,



1 her grace in only asking for that amount shouldn't detract  
2 from someone like Aprilblonde asking for more. And so the  
3 defendant's idea that there's some comparative analysis that  
4 goes into restitution --

5 THE COURT: Yeah, I have no idea. I have no idea  
6 how to make calculable the incalculable damages that are  
7 inflicted. In any particular case, one image of one  
8 individual child could cause damages that far exceed that of  
9 another child where there were a thousand images. There's  
10 no way that this Court has seen in the case law, nor have I  
11 experienced something that would tell me, well, this is --  
12 this is a good way to do it, Judge. I have always been  
13 dubious of the attempt by the Sentencing Commission and  
14 others to link length of sentences, restitution amounts and  
15 everything else to the number of images. It's some  
16 indication -- where brutalization of children have occurred,  
17 it's some indication of the damages. And in an individual  
18 case it is relevant to determine that. But I agree with  
19 you. There's no way that I can compare the damage of one  
20 child to another readily by counting photographs.

21 MS. WHITE: I agree with the Court, Your Honor. I  
22 think about Maureen. And I believe it's Maureen. She's one  
23 of the victims in this case. She didn't find out there were  
24 photographs until three years ago. So after she had healed  
25 from the sexual abuse -- she's almost the perfect case to

1 talk about here because she presumably healed. She grew up.  
2 She grew on. She established a life. And then all of the  
3 sudden in 2020, she finds out there are these images and  
4 they are all over the Internet. My goodness. That's a  
5 whole new and ripped off Band-Aid of hurt and anger and pain  
6 that just happened in the last three years and the  
7 defendant's one of those directly responsible for it.

8 So I may be preaching to the choir a bit, Your Honor.  
9 I feel like these children -- and some of them are grown-ups  
10 -- they just deserve the best of the wisdom the Court can  
11 give them. But I know that Your Honor will look at what  
12 they've submitted and obviously will supplement what hadn't  
13 made its way to you. But you'll make a reasoned decision  
14 that is not simply this. The defendant wants you to say,  
15 Mr. Schles wants you to say, there isn't enough information  
16 to agree to anything but the bare minimum that the law  
17 requires. Your Honor, if you came back at the end of your  
18 analysis and you said, Mrs. White, I'm only awarding \$3,000  
19 for each child, I would respect that because I know that you  
20 put the effort and the analysis into looking at what these  
21 children went through. But I would ask the Court not to  
22 adopt defense counsel's position, which is simply there  
23 isn't enough information. Because we've given him  
24 everything that we have and everything that any court I know  
25 of in the country has to consider. And so if that's not

1 enough, I don't know what would be.

2 MR. SCHLES: Your Honor, may I respond?

3 THE COURT: Sure.

4 MR. SCHLES: I think we can all see the conundrum  
5 here. But you can't come into court and go, well, the  
6 evidence is difficult to gather and present, therefore, we  
7 don't need to gather and present evidence. Courts are based  
8 on evidence. We have to have evidence. They have  
9 established -- and I believe I'm not arguing -- that the  
10 three women originally presented were victims.

11 They then have the next burden of showing by a  
12 preponderance of the evidence that that person's individual  
13 measure of damages proximately caused by my specific client,  
14 Mr. Dugan, exceeds the minimum of \$3,000. They have utterly  
15 failed to even attempt that. If they had presented some  
16 methodology, I might be able -- you know, it's kind of my  
17 job to dissect it and critique it. They haven't even done  
18 that. They just said, "Here's the request, pay them what  
19 they've asked for." That's all we have except it's piled  
20 into, you know, a three-inch thick binder.

21 THE COURT: Well, both of your arguments are  
22 founded in case law. And I don't -- I think I share the  
23 Government's skepticism about one of them. The Supreme  
24 Court says that if I can't look at the exact causal  
25 connection and make a determination as to damages in that

1 way, then I should order restitution in an amount that  
2 comports with the defendant's relative role in the causal  
3 process. That's very difficult. I don't even -- it boggles  
4 my mind --

5 MR. SCHLES: Your Honor, if I may --

6 THE COURT: -- if I were to do that.

7 MR. SCHLES: Ms. White's example of the one that  
8 just came to light indicates another issue. Should my  
9 client's pro rata share of the damages be greater because we  
10 happen to come before or after the random of one specific  
11 finding? And I think we can all agree -- I mean, nobody's  
12 saying the statute was designed in a way that's easy to  
13 administer. I mean, it could have said, you know, just a  
14 set amount for every image. There's millions of things that  
15 Congress could have done that it didn't do.

16 And then the Supreme Court in *Paroline* gives additional  
17 guidance. And you see the courts following *Paroline* saying,  
18 well, we don't know how to do *Paroline*. But if you don't  
19 know how to do anything, you can't use the lack of knowing  
20 how to do it to increase the punishment of the defendant. I  
21 mean, that's basic, you know, due process in the United  
22 States.

23 THE COURT: I certainly think that the times I've  
24 been subjected to viewing child pornography that the victims  
25 of that pornography could not be fairly compensated by --

1 MR. SCHLES: Any amount.

2 THE COURT: -- any amount of money. So it is an  
3 artificial construct. And much of the law does have these  
4 conundrums. I think that Congress -- I shouldn't say that  
5 Congress copped out, but I will have to think of another  
6 word that works, by putting that \$3,000 minimum in there.  
7 Because there just isn't a way in an individual case without  
8 traumatizing and re-traumatizing the victim, having  
9 miniature trials over restitution in every case.

10 Frankly, I think that -- at the risk of saying  
11 something that may get me reversed, I think that whatever  
12 this defendant can pay to these people to whom he  
13 contributed damages, he should pay. The damages are large.  
14 But as defense states persuasively, normally we have proof  
15 when we come -- with damages.

16 So it -- I'm not real -- I'm not real confident of my  
17 ability to do justice in these cases. I truly am not. I  
18 can follow the statutory scheme, but I don't -- it's sort of  
19 like somebody killing your child. There is no justice, is  
20 there, for the parent? There's no justice for these kids.

21 Well, what the Government has told me is I have  
22 information and the probation officer has information that I  
23 haven't looked at.

24 MS. WHITE: That's correct, Your Honor. And we'll  
25 get that to you this afternoon. And if the Court wanted to

1 take a brief recess, I could try to send it over now. I  
2 have it here with me.

3 We are asking that the Court consider all five victims  
4 because they all submitted requests prior to restitution  
5 being determined in this case.

6 As for Mr. Schles' statement that we didn't bring  
7 anything to support it, well, I think the documentation  
8 that's outlined in the chart that was attached to my  
9 memorandum refutes that to the best that we can. And I can  
10 only do the best that I can to --

11 THE COURT: Well, I'm just going to do the best I  
12 can with what you all gave me. And it's not going to be  
13 adequate. It's just that simple. We're just going to do  
14 the best we can.

15 Do you want another hearing or do you want me to take  
16 what I've got and enter an order?

17 MR. SCHLES: Your Honor, I don't know that I can  
18 do anything but repeat the same thing over and over ad  
19 infinitum.

20 MS. WHITE: Your Honor, we're fine with the Court  
21 taking it under advisement and submitting an order.

22 THE COURT: All right. I still need the  
23 documentation. But you said probation staff has it?

24 MS. WHITE: Yes. And I will work with your clerk  
25 after the Court is in recess to make sure that our files all

1 match.

2 THE COURT: Okay. Well, make sure Mr. Schles has  
3 everything we have.

4 MS. WHITE: We are on the same page with that. I  
5 had verified that in June.

6 MR. SCHLES: If you find that what you sent me in  
7 -- or your assistant sent me last week is not, you can just  
8 send me what --

9 MS. WHITE: We'll look at it after the Court  
10 adjourns and we can resolve it right now.

11 THE COURT: Sure. Yeah. I have able counsel.  
12 I'll do the best I can. I won't be happy with the result  
13 and there you go.

14 The Court was joking about a most esteemed  
15 colleague whose representation for thoroughness when it  
16 comes to matters of restitution is legendary. I will just  
17 leave it at that. Is that fair? You don't have to answer  
18 that.

19 MS. WHITE: Thank you for your time.

20 THE COURT: Anything else?

21 MR. SCHLES: No, Your Honor.

22 MS. WHITE: No, Your Honor.

23 THE COURT: Thank you. All right. Court's  
24 adjourned.

25 (Proceedings concluded at 1:50 p.m., July 17, 2023.)

1 CERTIFICATION:

2 I, Amanda J. Pickens, Federal Official Court Reporter,  
3 certify that the foregoing is a true and correct transcript  
4 from the record of proceedings in the above-entitled matters  
5 as reported on July 17, 2023.

6  
7 s/Amanda J. Pickens, CCR, RPR July 28th, 2023

8 Amanda J. Pickens, CCR, RPR  
9 Federal Official Court Reporter  
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